

>>> Clerk Info 6/16/2005 4:13 PM >>>

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Although the comments so far from Anne Yantus and James Lawrence raise very valid concerns, at least in general, I support reducing the time limit from 12 to 6 months. At least as far as I can see, retaining the protections from MCR 7.205(F)(4) should meet their concerns. After all, although transcripts are too often unconscionably late, the application need not be filed until 42 days after they actually are filed. Personally, I don't see how 6 months is really too little time. Twelve months, on the other hand, is quite long.

Anyway, I have two comments. First, I'm concerned about any retroactive effect that the proposed court rule change would have. At sentencing, the person would presently believe that he has a year to proceed. He then might not hear about the rule subsequently changing and then file too late. I'm thinking that the new rule maybe should apply to only those cases where the sentencing occurs after the date that the rule goes into effect.

Second, why not amend MCR 6.509(A) as well? Amending this rule makes even more sense than amending 7.205. Virtually none of the concerns raised so far to 7.205 would apply to 6.509(A). Motions for relief from judgment are seldom decided on anything but the briefs anyway. Therefore, concerns over transcripts are, at the very least, lessened. Further, as the right to counsel does not apply, the timing over requesting one is not a concern either. In addition, unlike a first appeal to the Court of Appeals, the parties have already essentially written their briefs in 6.509(A) even before the application is filed. (At least my answer to the Court of Appeals application virtually always suspiciously looks very similar to the answer that I filed in the circuit court.) Therefore, why should a defendant have a full year to file under 6.509(A)? A full year is extravagant. In fact, not changing 6.509(A) in at least some way would lead to a contradiction. Presently, it refers to "[t]he 12-month time limit provided by MCR 7.205(F)(3)." If in fact 7.205(F)(3) is reduced to 6 months, if 6.509(A) is not also amended, what will it then mean? Will it be 12 months as specified or 6 months as referred to? To be consistent, if 7.205(F)(3) is changed, then so too should 6.509(A).